

Senate Bill No. 447

CHAPTER 50

An act to add Section 11102.2 to the Penal Code, relating to criminal records.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 447, Yee. Criminal records: custodian.

Existing law generally regulates how criminal records are maintained.

This bill would, commencing January 1, 2011, require the Department of Justice to establish, implement, and maintain a confirmation program to process fingerprint-based criminal record background clearances on individuals designated by an agency as a custodian of records. The bill would require agencies to designate a custodian of records, and to annually notify the department as to the identity of the agency's custodian of records.

By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 11102.2 is added to the Penal Code, to read:

11102.2. (a) (1) As used in this section, "custodian of records" means the individual designated by an agency as responsible for the security, storage, dissemination, and destruction of the criminal records furnished to the agency and who serves as the primary contact for the Department of Justice for any related issues.

(2) As used in this section, "agency" means any public or private entity that receives criminal history information from the Department of Justice.

(3) As used in this section, "department" means the Department of Justice.

(b) Commencing January 1, 2011, the department shall establish, implement, and maintain a confirmation program to process fingerprint-based criminal record background clearances on individuals designated by agencies as custodians of records. Commencing July 1, 2011, no person shall serve as an agency custodian of records unless confirmed by the department.

Criminal justice agency personnel who have undergone a state and federal criminal record background check are exempt from the requirements of this section. The department shall charge a fee of thirty dollars (\$30) to cover the costs of the confirmation program in addition to a fee sufficient to cover the cost of processing the appropriate state and federal level criminal record background check.

(c) Every agency must designate at least one custodian of records.

(1) The agency shall submit to the department the fingerprint images and related information of the individual or individuals designated by the agency to serve as the custodian or custodians of records, along with the appropriate fees and documentation. The department shall retain one copy of the fingerprint impressions to process a state level criminal record background check, and it shall submit one copy of the fingerprint impressions of each individual to the Federal Bureau of Investigation to process a federal level criminal record background check.

(2) The department shall retain the fingerprint impressions for subsequent arrest notification pursuant to Section 11105.2.

(d) Every individual confirmed as a custodian of records shall be at least 18 years of age and shall have completed and submitted a written application prescribed by the department.

(e) Prior to confirming an individual as a custodian of records, the department shall determine that the applicant possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position.

(f) The department shall not confirm any individual who has been convicted of a felony offense or any other offense that involves moral turpitude, dishonesty, or fraud, or that impacts the applicant's ability to perform the duties or responsibilities of a custodian of records. The confirmation shall be revoked if, at any time, the individual is convicted of either a felony offense, or any other offense that involves moral turpitude, dishonesty, or fraud, or that impacts the applicant's ability to perform the duties or responsibilities of a custodian of records.

(g) In addition to subdivision (f), the department may refuse to confirm any individual as a custodian of records or revoke or suspend the confirmation of any custodian of records if the individual has done any of the following:

(1) Made a substantial and material misstatement or omission in the application submitted to the department.

(2) Been convicted of an offense of a nature incompatible with the duties of a custodian of records. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this subdivision.

(3) Failed to discharge fully and faithfully any of the duties or responsibilities required of a custodian of records.

(4) Been adjudged liable for damages in any suit grounded in fraud, misrepresentation, or in violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully the duties of a custodian of records.

(5) Committed any act involving dishonesty, fraud, or deceit.

(6) Failed to submit any remittance payable upon demand by the department under this section or failed to satisfy any court ordered money judgment, including restitution.

(h) The agency shall immediately notify the department when the designated custodian of records no longer serves in that capacity. By March 1, 2012, and by March 1 each year thereafter, the agency shall notify the department, using a form provided by the department, of the individual or individuals currently serving in the capacity of custodian of records.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.